

ARTICLE 81-04.1

SALES AND USE TAXES

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81-04.1-01-01. Purpose. The retail sales tax is imposed on the gross receipts of retail sales of tangible personal property within North Dakota. The statutes governing sales tax in North Dakota are found in North Dakota Century Code chapter 57-39.2.

The use tax is imposed on the storage, use, or consumption of tangible personal property in North Dakota. If property is purchased at retail for use, storage, or consumption in North Dakota and is not subject to sales tax in North Dakota, it is subject to use tax. The statutes governing use tax in North Dakota are found in North Dakota Century Code chapter 57-40.2.

The purpose of the administrative rules covering sales and use tax in North Dakota is to define and expand upon the relevant statutes in the North Dakota Century Code. Therefore, these rules are to be used in conjunction with relevant statutes.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01

81-04.1-01-02. Confidential information. A return includes all the business records and information of a retailer which reflect or record sales or use tax data which are used to calculate sales or use tax obligations for purposes of North Dakota Century Code section 57-39.2-23.

The tax commissioner is authorized to release name and mailing address information on sales and use tax permitholders to any North Dakota state government agency for the limited purpose of distributing state government publications or information. Permitholder information that can be released is restricted to the business name and mailing address used to mail sales and use tax returns to permitholders. Other permitholder information, including filing schedule, starting date, payment history, ownership status, and standard industrial classification, is confidential and may not be released by the tax commissioner.

The tax commissioner may not release any information regarding a sales and use tax permitholder to any agency, entity, or representative of the federal government, of any other state government, of any local government, or of any foreign government. Information regarding a North Dakota sales and use tax permitholder may not be released to a private entity for any purpose, including fundraising or other sales solicitation, except for name and mailing address

information provided to a private entity to facilitate the publication and distribution of state government publications or information.

History: Effective June 1, 1984; amended effective November 1, 1991.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-23

81-04.1-01-03. Taxable sales - Engaging in business. Repealed effective November 1, 1987.

81-04.1-01-03.1. Definitions. Any person having nexus in North Dakota and making taxable sales in or making taxable sales having a destination in North Dakota must obtain a North Dakota sales and use tax permit from the tax commissioner and collect and remit tax on these sales.

For purposes of implementing subsection 8 of North Dakota Century Code section 57-39.2-01 and subsection 6 of North Dakota Century Code section 57-40.2-01, unless the context otherwise requires:

1. "Advertisement" means any message by which a retailer solicits retail sales of tangible personal property. It includes but is not limited to:
 - a. Each transmittance, by United States mail, common carrier or otherwise, of a printed sales solicitation message in the form of a bulk mailing or bulk delivery, a sales catalog, brochure, advertising flier, billing or package insert, or similar publication or device.
 - b. Each transmittance of a sales solicitation message by space advertising in a newspaper, magazine, or other publication, which is local, regional, or national in nature.
 - c. Each transmittance of a sales solicitation message by radio, television, telephone, telegraph, computer data base, or by cable, optic, microwave or other electronic means, or by any other communications means.
2. "Destination" means the location to which the delivery of tangible personal property is made by a retailer or the retailer's agent.
3. "Regular or systematic solicitation" means three or more separate transmittances of any advertisement or advertisements during a testing period.
4. "Separate transmittance" means any transmittance of an advertisement during any twenty-four-hour period.
5. "Solicitation" means:

- a. Offering, by advertisement, to make a taxable sale with a destination in North Dakota.
 - b. Inviting offers to purchase tangible personal property for delivery in North Dakota.
- 6. "Taxable sale" means a sale made by a retailer or a retailer maintaining a place of business in this state to purchasers for final use or consumption and not for resale or processing.
- 7. "Testing period", with respect to the determination of whether a person is required to obtain a permit and collect use tax as a retailer for tax periods commencing on or after the effective date of this section, means the twelve-month period ending on September thirtieth of the preceding calendar year.

History: Effective November 1, 1987; amended effective March 1, 1988; November 1, 1991.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-19, 57-40.2-01

81-04.1-01-04. Permits. A sales tax permit will not be issued to a person not engaged in a retail business for the purpose of permitting that person to purchase at wholesale or to purchase without payment of sales tax to the seller.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-14

81-04.1-01-05. Direct payment permits. The direct payment permit authorizes the applicant to make direct payment of sales or use tax to the tax commissioner.

An applicant electing to pay taxes directly to the tax commissioner must issue a direct payment certificate to the retailer in the form prescribed by the tax commissioner. The certificate exempts the retailer from liability for sales or use tax and obligates the applicant to pay taxes directly to the tax commissioner.

- 1. To qualify for a direct payment permit, a business must demonstrate to the satisfaction of the tax commissioner that:
 - a. The person purchases substantial amounts of tangible personal property for business use under circumstances which make it difficult or impractical at the time of purchase to determine whether such property is subject to sales or use tax.
 - b. The person holds or has applied for a sales and use tax permit.

- c. The direct payment method will materially reduce the administrative work of collecting the tax.
 - d. The firm's accounting system will clearly reflect the proper amount of tax due.
 - e. The firm makes taxable purchases in sufficient volume to justify the expense of regular tax department audits.
- 2. Application for a direct payment permit must be submitted to the tax commissioner. The application must be a letter containing the applicant's name, address, sales and use tax account number, description of the business, the accounting system used, volume of purchases, and justification for adopting the direct payment method.
- 3. Each application accepted will receive a direct payment permit numbered, dated, and signed by the tax commissioner or the commissioner's representative. The tax commissioner will issue a direct payment permit only when, in the tax commissioner's judgment, it is in the best interest of the state to do so.
- 4. Each person issued a direct payment permit must keep a list of all vendors from whom purchases are made under the direct payment method and must submit such list for examination upon the tax commissioner's request.
- 5. The holder of a direct payment permit must either issue the permit to all vendors required to collect North Dakota sales and use taxes and accrue all liability as a use tax, or maintain accounting records sufficient to show the amount of sales tax paid to vendors in each reporting period.
- 6. If the holder of the permit chooses the latter alternative, all purchases from any one supplier must be made either exempt or taxable. The vendor may not assess the sales tax on only selected transactions.
- 7. A direct payment permit may not be used in connection with:
 - a. Purchases of taxable food or beverages.
 - b. Purchases of taxable lodging or related services.
 - c. Purchases of admissions to places of amusement or athletic events, or the use of amusement devices.

8. A direct payment permit is not transferable. The tax commissioner may revoke a direct payment permit at any time with or without cause.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-14.1, 57-40.2-13

81-04.1-01-06. Sale of business - Permit not transferable. When the holder of a sales tax permit sells the business to another person, all sales tax for which the holder is liable is due immediately. The holder must immediately notify the tax commissioner and surrender the holder's permit for cancellation. Within fifteen days, the holder must make a final sales tax return and remit all sales tax due. The purchaser of the business must make application for a new permit in the purchaser's own name.

If the ownership status of a business which holds a sales tax permit changes from one type of business ownership to another, the new owner must apply for a new permit.

When a corporation is sold, or when new corporate officers are added or replaced, the tax commissioner must be notified of these changes although no new sales tax permit is required. A new permit is required if one or more partners enter or leave a partnership.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-10, 57-39.2-11, 57-39.2-14, 57-39.2-20

81-04.1-01-07. Change of location. When a holder of a retail sales tax permit changes the business location of the retail business without changing the nature of the business, the permitholder must notify the tax commissioner of the change of location and of the new address. Upon notification, the tax commissioner will issue without charge a corrected sales tax permit showing the new business address.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-14

81-04.1-01-08. Deduction for administrative expense. Compensation for sales or use tax permitholders is applied as follows:

1. A sales and use tax permitholder having taxable sales and purchases equal or exceeding three hundred thirty-three thousand three hundred thirty-three dollars for the preceding calendar year may deduct and retain one and one-half percent of the tax due, but this deduction may not exceed eighty-five dollars per month.

2. A sales and use tax permitholder that is a remote seller, or a certified service provider assigned by the qualifying permitholder, is allowed to deduct and retain up to one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement approved by the streamlined sales and use tax governing board. For purposes of this subsection, "remote seller" means a retailer that does not have adequate physical presence to establish nexus in this state for sales tax purposes.

Qualified sales or use tax permitholders, including permitholders and certified service providers who pay tax due under chapter 57-39.4, who fail to file the forms on time, or fail to pay the tax due on time, forfeit the one and one-half percent compensation for expenses.

The returns filed by qualified permitholders under section 57-39.2-12 or 57-40.2-07 will be reviewed by the office of the tax commissioner each calendar year to determine if new sales or use tax permitholders qualify to file monthly returns and to determine if sales or use tax permitholders who have filed monthly returns must revert to quarterly filing status. Changes in filing status as a result of the calendar year reviews will occur on or after July first of the following year.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-12, 57-39.2-12.1, 57-40.2-07, 57-40.2-07.1

81-04.1-01-09. Deposits or prepayments on purchase price of tangible personal property. When retailers of tangible personal property accept deposits from customers for goods to which the purchaser obtains possession only upon payment of the full purchase price, if there is a contract to sell specific goods, title passes to the buyer when the parties to the contract intend it to be transferred, with consideration of the terms of the contract, the conduct of the parties, usage of trade, and the circumstances of the case.

If the buyer makes a deposit on the purchase price of specific goods, and the seller assigns those goods to the sale, title to the goods passes and the sale is made at the time the contract is entered into irrespective of the fact that the full amount of the purchase price may not have been paid by the buyer. The prepayment or deposit must be included in the measure of the seller's tax at that time.

If no specific goods are selected by the buyer or assigned to the sale by the seller, title to the goods does not pass until the buyer selects specific goods, and they are assigned to the sale by the seller. Here the seller merely acts as a depository of funds left with the seller by the buyer, and such prepayments or deposits are not receipts from a sale of tangible personal property until a sale is actually made. In such case, the sale takes place when possession of the goods

is delivered to the buyer, and the seller must report as gross receipts from the sale the total amount of the purchase price as of the time of sale.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-10, 57-39.2-11, 57-39.2-12, 57-39.2-12.1

81-04.1-01-09.1. Effect of rate changes. Except for contracts for the construction of highways, roads, bridges, and buildings, when an unconditional contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the goods are delivered after that date, the new rates are applied to the transaction. When an unconditional contract to sell tangible personal property is entered into prior to the effective date, and the goods are delivered prior to that date, the tax rates in effect for the prior period are applied to the transaction.

When a contract to sell tangible personal property contains a specific provision to pass title prior to delivery of the goods, the rates in effect at the time title transfers are applied.

Lessors who lease tangible personal property are required to collect tax from their lessees at the rate in effect at the time the lease or rental payment is due, including payments on contracts entered into prior to a rate change.

For services covering a period starting before and ending after the effective date of a rate increase, the new rate shall apply to the first billing period starting on or after the effective date. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

History: Effective March 1, 1988; amended effective March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-10, 57-39.4-30, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-09

81-04.1-01-10. Freight, delivery, and other transportation charges. Freight, delivery, and other transportation charges are considered part of the selling price. If the sale is taxable, the freight, delivery, and other transportation charges that are part of the sale and billed by the seller are taxable. If the product being delivered is exempt from sales tax, then freight, delivery, and other transportation charges are also exempt. Delivery charges billed directly to the customer by delivery services that are not making the sale of tangible personal property remain exempt from sales and use tax.

History: Effective June 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-40.2-01, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

81-04.1-01-11. Finance or carrying charges. Finance, carrying, and interest charges are not taxable if separately agreed upon by the buyer and the seller and if separately billed by the seller to the buyer.

History: Effective June 1, 1984; amended effective March 1, 1988; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-01-12. Processing. The nonreturnable containers in which tangible personal property is sold, when sold for processing, are exempt from sales tax if it is intended that such containers become an integral, ingredient, or component part of tangible personal property intended to be sold ultimately at retail. Receipts from the sale of tangible personal property to fabricators, manufacturers, producers, or processors which will not actually become an integral, ingredient, or component part of the product produced are taxable.

The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property is a sale of tangible personal property for a purpose other than for processing and is taxable sold to a contractor or subcontractor for attachment to real property situated outside of North Dakota if taxable in state of attachment.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01

81-04.1-01-13. Containers, wrapping materials, cartons, string. Receipts from the sale of containers, labels, cartons, packing cases, wrapping paper, wrapping twine, bags, bottles, shipping cases, and similar articles and receptacles sold to manufacturers, producers, wholesalers, retailers, or jobbers, which are used as containers of tangible personal property and are sold either for resale or at retail, are not subject to sales tax if the charge made for the property sold includes the container and title to the container passes to the purchaser with the merchandise sold.

Receipts from the sale of containers, labels, and cartons sold to those businesses rendering service are subject to the sales tax since these businesses are the users or consumers of such items, and sales to them are taxable.

Containers used for the purpose of delivering tangible personal property sold to customers, which may be returned to the seller, are not subject to sales tax when sold to the customer. The seller consumes or uses the containers in the seller's business, and the sale to the seller of such containers is subject to the tax. A

deposit made by or required of the customer to secure the return of the container is not regarded as a retail sale, and it is not subject to the sales tax.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04

81-04.1-01-14. Receipts from sales of taxable materials, supplies, and services. Receipts from sales of taxable materials, supplies, and services to retail stores for their own use in maintenance, advertising, and office use are not for resale and are subject to sales tax.

The retailer must pay tax on all items for final use when purchasing them from the supplier. If the retailer fails to pay the tax when buying these items, the retailer must report them on the retailer's regular sales and use tax return for the filing period in which the items were purchased.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-07

81-04.1-01-15. Certificate of resale. Receipts from the sale of tangible personal property for the purpose of resale by the purchaser are not subject to sales tax if the buyer furnishes a North Dakota resale certificate, the multistate tax commission uniform sales and use tax certificate, or a certificate of exemption authorized by the streamlined sales tax agreement. A new certificate is not needed for each sale, but the seller must have a signed certificate from all customers who buy for resale.

If a seller claims a sale as a sale for resale, and it is determined that such sale is not exempt, any tax and penalty due thereon will be collected from the buyer.

Whenever a person submits a false certificate to a seller, the person submitting the false certificate is liable for any tax and penalties which attach on the sale.

History: Effective June 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-10, 57-39.4-18

81-04.1-01-16. Casual or occasional sales. Casual or occasional sales made by an individual are not subject to sales tax. Sales made in the course of a regularly conducted business are subject to sales tax. The following are retailers who must collect and remit sales tax:

1. The auctioneer who auctions the belongings of several undisclosed individuals at a public auction.

2. Persons who buy antiques from others and offer them for sale at a public auction or through a private sale.
3. Persons who conduct permanent rummage sales through which they dispose of the property of others.

A retailer may not claim a casual sale if the property sold is similar to property sold by the retailer in the regular course of business.

A person selling one's own products occasionally is making casual sales, and such sales are not taxable. Sales of such number, volume, or frequency as to indicate that the sale is not a casual or isolated one are subject to tax.

The sale of capital assets, such as equipment, machinery, and furnishings which are not sold as inventory, shall be deemed outside the regular course of a business and deemed to be a casual sale and no sales tax is due. If the business being sold is a retail business and the business will be sold in its entirety by the owner, the inventory is considered to be sold for resale while the sale of the other business assets is considered to be a casual sale. Sale of a retail inventory through auction is subject to section 81-04.1-04-11.

History: Effective June 1, 1984; amended effective August 1, 1994; June 1, 2002.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.3

81-04.1-01-17. Used or secondhand tangible personal property. Used or secondhand tangible personal property in the form of goods, wares, and merchandise is taxable in the same manner as new property would be taxed, unless the sale is a casual or isolated one.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-01-18. Goods on consignment. Persons engaged in the business of selling tangible personal property of others are retailers. Sales are subject to sales tax if such property is sold in the retailer's place of business or is sold by the retailer for an undisclosed principal. This also applies to an auctioneer who sells tangible personal property belonging to a retailer, no matter where the sale is located.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3

81-04.1-01-19. Sale of traded-in property. When one article is traded in on another article, the sales tax applies only on the difference in value between the two articles. The secondhand article is subject to sales tax when resold.

Whenever property not subject to sales tax or to motor vehicle excise tax is taken as part consideration of the purchase price, the purchaser is required to pay sales tax on the full purchase price.

When a used mobile home is traded in for other tangible personal property, sales tax applies on the full purchase price with no deduction for the value of the trade-in.

When used farm machinery is traded in for new farm machinery or other tangible personal property, farm machinery gross receipts tax or sales tax applies on the net selling price after deduction for the value of the trade-in.

History: Effective June 1, 1984; amended effective April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-01-20. Repossessed and returned property. When tangible personal property which has been repossessed by the original seller or by a finance company is resold, the entire gross receipts from such sales are taxable.

When retailers sell tangible personal property on time payments, and it becomes necessary for the retailer to repossess the tangible personal property, the transaction is handled as follows:

1. If the retailer previously included the total selling price of the tangible personal property in the retailer's gross sales and remitted tax to the tax commissioner but did not collect sales tax from the buyer, the retailer may enter a credit in the amount of the unpaid balance of the original sale. This credit is deductible by the retailer regardless of whether or not the retailer has assigned the installment contract. If the retailer assigns the contract, it must be assigned subject to an agreement to repurchase it in the event of default by the purchaser under the contract or subject to a guarantee that the payment under the contract will be made.
2. If the retailer collected and remitted the full amount of sales tax on the full sales price at the time of sale, the retailer is not entitled to take a deduction for the goods returned unless the tax is returned to the purchaser on the unpaid balance.
3. If the retailer included in gross receipts only the amount of cash actually received from the sale and did not collect full sales tax from the customer, no credit for return of the repossessed property to the retailer's stock will be allowed.

When goods are returned to a retailer, and the purchase price is returned to the buyer, the retailer may claim a credit on a subsequent sales and use tax return for

the amount of the sale claimed on a prior return if the previously paid tax is returned to the customer.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-05, 57-39.2-24, 57-39.2-27

81-04.1-01-21. Articles made to order. When manufacturers, fabricators, or retailers agree to furnish the material and fabricate articles of tangible personal property, the total receipts from the sale of such articles are subject to sales tax. These businesses may not deduct labor or service costs of fabrication or production from the sales tax base even though such charges are billed to customers apart from charges for materials.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1

81-04.1-01-22. Services. Personal and professional services are not subject to sales tax, but materials and supplies used solely in rendering services are subject to sales tax when purchased. Materials and supplies which may be used either in rendering service or sold at retail may be purchased for resale, and sales tax must be collected when these items are sold at retail. The portion of these materials and supplies sold separately to the customer is subject to sales tax and must be included in the sales and use tax report as gross sales. The portion of these materials and supplies used and consumed in rendering service is taxable. The purchase cost must be included as use tax on the sales and use tax return of the person rendering the service.

If taxable materials and supplies are purchased from a supplier holding a North Dakota sales and use tax permit, sales tax must be paid to the supplier, but if taxable materials and supplies are purchased from an out-of-state supplier who does not collect North Dakota sales tax, the use tax must be remitted to the tax commissioner by the purchaser.

Persons engaged in the business of repairing, altering, restoring, or cleaning of tangible personal property belonging to others must collect sales tax on the itemized charge for tangible personal property used in the repair. Separately stated charges for repair labor are not subject to sales tax. If the charge for tangible personal property used in the repair is not itemized, the repairer must pay sales or use tax on the cost of the repair parts.

History: Effective June 1, 1984; amended effective March 1, 1990; June 1, 2002.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-14, 57-40.2-01, 57-40.2-02.1, 57-40.2-05, 57-40.2-06, 57-40.2-13

81-04.1-01-23. Manufacturing machinery and equipment. Manufacturing is a process which produces a new article with a different form, use, and name. The modification of articles of tangible personal property is not manufacturing. For example, the creation of steel ducts or I-beams is manufacturing whereas the modification of steel ducts or I-beams to meet the specifications of a particular real property construction contract is not manufacturing. To be considered manufacturing, the raw materials must be materially altered.

By way of illustration and not of limitation, the following are manufacturers: agricultural commodity production facility, food, beverage, confectionary plants; bakeries; textile mills; apparel makers; wood and lumber plants; furniture and fixture makers; paper product makers; printers and publishers (includes newspapers); chemical producers; leather good plants; stone, clay, glass, concrete product makers; cement and asphalt plants; metal ware makers; auto/aircraft makers; dairy processors (not producers); photo finishers (not photographers); and dental, medical, and ophthalmologic labs.

By way of illustration and not of limitation, the following are not manufacturers: farmers or ranchers, construction contractors, refining companies, artists, utilities, nurseries, restaurants, pharmacists, drycleaners, photographers, advertisement agencies, secretarial services, computer programmers, auto body shops, repair shops, radio and television stations, architects, jewelers, grain elevators, and tire retreaders or recappers.

The purchase or rental of machinery and equipment is exempt from sales and use taxes if the machinery or equipment:

1. Is used directly in the process of manufacturing tangible personal property for wholesale, retail, or lease;
2. Is used in a new manufacturing plant or in a physical or economic expansion of an existing plant; and
3. Is used directly in the manufacturing process more than fifty percent of the time the machinery or equipment is used by the manufacturer.

The manufacturing process begins at the point where the raw materials are first received at the plantsite and includes all direct processes prior to transporting the finished product from the plantsite. In addition, machinery and equipment used by a manufacturer to conduct research, development, and design activities qualify for the sales and use tax exemption. Examples of research, development, and design equipment include computer software and hardware used to draw, design, or plan products and machinery and equipment used to build or test prototype models.

Machinery and equipment used directly in the manufacturing process include molds and dies that determine the physical characteristics of the finished product or its packaging material, computers and related equipment that directly control or

measure the manufacturing process, and testing equipment used to measure or test product quality.

Machinery and equipment used directly in the manufacturing process also include temperature or humidity control equipment necessary to maintain certain temperature or humidity levels in a limited area of the processing or manufacturing facility where either temperature or humidity must be closely regulated for the proper function or production process to occur.

Equipment or machinery used for pollution control or general heating or cooling of the facility or used to otherwise control the working environment does not qualify for the tax exemption. Also, items which are consumed or destroyed in the manufacturing process but which do not become a part of the finished product are not machinery and equipment and are subject to sales and use tax. Machinery and equipment not used directly in the manufacturing process include repair parts and equipment used for repairing, cleaning, or maintaining facilities, machinery, or equipment; handtools; backup or standby power supplies; computer hardware and software used to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment such as fire sprinkler systems and burglar alarms. Purchase of these items by a manufacturer is taxable, and suppliers shall charge sales or use tax on these items. If the items are purchased from an out-of-state supplier or if a North Dakota supplier fails to charge the tax, the North Dakota manufacturer shall report the sales or use tax directly to the North Dakota tax commissioner.

Requests by the manufacturer to purchase or lease machinery and equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the manufacturer may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the manufacturer or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery and equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The manufacturer may provide the approval letter to its equipment and machinery suppliers to avoid paying sales or use taxes on approved equipment. If a manufacturer purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.

A contractor consuming or installing materials, machinery, or equipment shall pay the applicable sales or use taxes and the manufacturer shall apply in writing for a refund of the taxes paid by the contractor on machinery or equipment qualifying for a sales and use tax exemption.

To receive a refund of taxes paid by a contractor, the manufacturer must provide documentation showing that the contractor paid North Dakota sales or use taxes on the qualifying machinery and equipment installed into the manufacturing facility. The tax commissioner may request an onsite inspection of the manufacturing facility before approving the refund of taxes paid by a contractor. The manufacturing facility may request that the refund amount be taken as a credit adjustment on its next sales and use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit was applied.

History: Effective June 1, 1984; amended effective March 1, 1990; November 1, 1991; August 1, 1994; April 1, 1995; June 1, 2002.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-25, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

81-04.1-01-23.1. Recyclers. Recycling means collecting or recovering solid waste material and processing it so it becomes a raw material or another product for sale. The recycling process begins at the point where the raw materials are first received at the recycling facility and includes all direct processes prior to transporting the product from the facility. To qualify as recycling, the solid waste must be processed. Collecting or transporting waste materials without processing them is not recycling.

Recycling machinery and equipment are exempt from sales and use taxes if the machinery or equipment:

1. Is used solely in the process of recycling solid waste that will become a raw material for manufacturing or that will become a product for sale at retail or wholesale; and
2. Is used in a new recycling facility or in a physical or economic expansion of an existing facility.

Machinery and equipment used directly in recycling of tangible personal property include pulverizers, shredders, balers, granulators, separators, and conveyors. Motor vehicles used to collect material to be recycled do not qualify for the exemption. Items consumed or destroyed in the recycling process, but which do not become a part of the finished product, are not considered recycling machinery or equipment and are subject to sales tax when purchased for use by the recycler.

Requests for approval to buy recycling machinery or equipment without paying tax or for refunds of tax paid on machinery or equipment that qualifies for the exemption must be made in writing to the tax commissioner. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery or equipment without paying tax or

prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond to each exemption request in writing stating whether or not the machinery or equipment qualifies as exempt recycling machinery or equipment. The recycler may provide the approval letter to equipment and machinery suppliers to avoid paying sales or use tax on approved equipment.

If a recycler purchases equipment before requesting a sales tax exemption, it must pay all applicable sales and use taxes at the time of purchase; however, the recycler may apply to the tax commissioner for a refund of taxes paid on qualifying equipment. When a recycler applies for a sales or use tax refund on qualifying machinery and equipment, the exemption application must include documentation showing the amount of tax paid.

History: Effective April 1, 1995.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-25, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

81-04.1-01-23.2. Agricultural commodity processing facility. An agricultural commodity processing facility is a manufacturing facility that processes agricultural commodities into marketable products. A facility, such as a grain elevator, that only stores, cleans, dries, or transports agricultural commodities, is not an agricultural commodity processing facility.

Tangible personal property consumed during the construction of an agricultural commodity processing facility or incorporated into the structure of an agricultural processing facility is exempt from sales and use tax. However, the contractor consuming or installing the materials shall pay the applicable sales or use taxes and the owner of the agricultural processing facility shall apply in writing for a refund of the taxes paid by the contractor.

The purchase or rental of machinery and equipment used directly in the processing of agricultural commodities into marketable products is regarded as manufacturing machinery and equipment, as provided in section 81-04.1-01-23. Machinery and equipment not used directly in the processing of agricultural commodities are subject to sales and use tax. Machinery and equipment not used directly in the processing of agricultural commodities include repair parts and equipment used for repairing, cleaning, or maintaining facilities, machinery, or equipment; handtools; backup or standby power suppliers; computer hardware and software to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment, such as fire sprinkler systems and burglar alarms. Items consumed or destroyed in the process and which do not become a part of the finished products do not represent qualifying machinery and equipment and are subject to sales and use tax.

Requests by the manufacturer to purchase or lease machinery or equipment without paying tax or for refunds of tax paid on machinery or equipment which

qualify for exemption must be made in writing to the tax commissioner. Only the owner of the agricultural commodity processing facility may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the owner of the agricultural commodity processing facility or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery and equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The owner of the agricultural commodity processing facility may provide the approval letter to its equipment and machinery suppliers to avoid paying sales and use taxes on approved equipment. If an owner of the agricultural commodity processing facility purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.

To receive a refund of taxes paid by the contractor, the owner of the agricultural commodity processor must provide documentation showing that the contractor paid North Dakota sales or use taxes on the tangible personal property consumed during construction, or on the tangible personal property qualifying machinery and equipment installed into the manufacturing facility. The tax commissioner may request an onsite inspection of the manufacturing facility before approving the refund of taxes paid by the contractor.

The owner of the agricultural commodity processing facility may request that the refund amount be taken as a credit adjustment on its next sales or use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit is applied.

History: Effective June 1, 2002.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-04.4, 57-39.2-25, 57-40.2-04, 57-40.2-13

81-04.1-01-23.3. Computer and telecommunications equipment.

1. Purchases of computer and telecommunications equipment intended for a new primary sector business or a physical or economic expansion of a primary sector business are exempt from sales tax. As used in this section:
 - a. "Computer equipment" means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of

a signal cable. Examples of devices fastened by a signal cable or other communication medium include terminals, card or tape punchers, printers, optical readers, display units or monitors, document sorters, and card readers.

- b. "Primary sector business" means a business that has been certified by the North Dakota department of commerce division of economic development and finance as a primary sector business.
 - c. "Telecommunications equipment" means tangible personal property used to provide a communication service, as defined by section 81-04.1-04-41.1.
- 2. Purchase of replacement communications and telecommunications equipment is subject to sales or use tax.
 - 3. A contractor installing qualifying computer and telecommunications equipment shall pay the application sales or use tax and the primary sector business shall apply in writing for refund of the taxes paid by the contractor on computers and telecommunications equipment qualifying for a sales or use tax exemption.
 - 4. Requests for a primary sector business to purchase or lease computer or telecommunications equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the primary sector business may apply for a refund of the sales or use tax paid on exempt computer or telecommunications equipment. A request for refund must include documentation showing the amount of tax paid by the primary sector business or contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying computer and telecommunications equipment without paying tax and prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.
 - 5. The tax commissioner shall respond in writing to each exemption request, stating whether or not the computer or telecommunications equipment qualifies for an exemption. The primary sector business may provide the approval letter to its computer and telecommunications equipment suppliers to avoid paying sales or use taxes on approved equipment. If a primary sector business purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.
 - 6. The primary sector business may request that the refund amount be taken as a credit adjustment on its next sales and use tax return; however, the tax exemption must be approved in writing by the tax

commissioner before the credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit is applied.

History: Effective June 1, 2002.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-25, 57-40.2-04, 57-40.2-13

81-04.1-01-24. Manufacturer's and retailer's federal excise tax. When products subject to federal manufacturer's excise tax are sold at retail by other than the manufacturer, the tax becomes a part of the sales tax base.

When manufacturers sell directly to consumers, and the federal manufacturer's excise tax is billed separately, the excise tax is not included in the sales tax base.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2

81-04.1-01-25. Credit sales and bad debts. Conditional sales contracts or other forms of sales, if the payment of the principal sum is to be extended over a period longer than sixty days from the date of the sale, do not include credit sales for which the purchaser is billed in full in intervals of less than sixty consecutive days even though the credit terms may allow the purchaser to extend the principal payments beyond sixty consecutive days.

When a retailer sells or renegotiates a conditional sales contract or other form of credit for which the principal payment is to be extended over a period longer than sixty days to a third party, the retailer is required to remit the full amount of tax due on the outstanding credit balance.

Bad debts may be deducted from gross receipts when the tangible personal property is sold on credit and the following facts are fully shown:

1. That the account has not been paid and has been found to be worthless.
2. That the amount was previously included in the gross receipts and sales tax collected and remitted by the retailer.
3. That the bad debt is written off as uncollectible in the retailer's books.

When filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the retailer, any bad debt provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received on behalf of the retailer.

The books and records of the party claiming the bad debt must contain the customers' names, addresses, amount charged off, and the period in which the sale was included in the holder's taxable sales, and be available for review by the tax commissioner upon request.

History: Effective June 1, 1984; amended effective July 1, 1989; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-05, 57-39.2-10, 57-39.2-11, 57-39.4-21

81-04.1-01-26. Purchases subject to use tax. When a retailer takes merchandise from stock for personal use or for a gift, the retailer is responsible for the use tax based on the cost of the merchandise. Retailers purchasing items for maintenance, advertising, and office use are subject to sales tax and must pay tax on all items for final use when purchasing them from the supplier. If the retailer fails to pay tax when buying these items, the retailer must report them on the quarterly sales or use tax return for the filing period in which the items were purchased.

A purchaser is required to pay any use tax to the seller if the seller holds a North Dakota sales and use tax permit. If the seller does not hold a permit, the purchaser is required to remit the tax directly to the tax commissioner.

History: Effective June 1, 1984.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.2, 57-40.2-05, 57-40.2-06, 57-40.2-07, 57-40.2-09, 57-40.2-13

81-04.1-01-27. Bookkeeping requirements. Repealed effective March 1, 1988.

81-04.1-01-27.1. Recordkeeping a sales and use tax transaction. Repealed effective June 1, 2002.

81-04.1-01-28. Coupons. Retailers shall include in their taxable receipts the exchange value of coupons or redemption certificates taken from customers, if such coupons or certificates are redeemed by a wholesaler or others.

The exchange value of coupons or certificates issued by the retailer as store coupons, and not redeemable by wholesalers or others, must be treated as cash discounts not subject to sales tax.

Sales of gift certificates or other forms of credit which may be redeemed by the holder for equivalent cash value are deposits or prepayments and are not

subject to tax when sold. However, the value of these certificates is taxable when redeemed if they are redeemed for taxable goods or services.

History: Effective October 1, 1986; amended effective March 1, 1988; July 1, 1989; March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3), 57-39.2-01(7), 57-39.2-02.1

81-04.1-01-29. Calculation of tax. The sales or use tax liability must be computed by multiplying the sales price of each taxable item or total purchase amount by the appropriate tax rate percentage. If the tax results in a fraction of a cent, the tax liability shall be carried to the third decimal place and rounded to the nearest whole cent. If the third decimal place is four or less, round down, and if the third decimal place is greater than four, round up.

History: Effective November 1, 1987; amended effective March 1, 1990; April 1, 2006.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-08.2, 57-39.4-25

81-04.1-01-30. Taxing separate articles. Repealed effective April 1, 2006.